

their permission, but that the administratrix of Jones is first liable to the amount of the assets in her hands, and Wayman also and before her, to the amount of any sums received in payment, or of any stocks or other property transferred as securities, which had been lost by his default; but the court was prevented from coming to any conclusion on the whole case in consequence of the imperfect and unsatisfactory nature of the testimony as to the character of the transfers made by Mrs. Jones to Wayman, and to the question whether the loss of the property so transferred was attributable to any act of his, for which he could be held accountable. No further testimony having been taken as to these points, this court is compelled to decide, as the Court of Appeals might have done, upon the testimony as it stands, however imperfect it may be.

The obscurity of the transaction, and consequent difficulty in the cause, arises, in a great measure, if not entirely, from the conduct of Wayman in undertaking to obtain redress for this illegal transfer, without communicating the fact to the court or asking its sanction of the measures adopted by him, both of which it was his duty to have done, and the omission of which if not inexplicable, is certainly difficult to explain. It must have arisen either from collusion with Jones in the transfer, probably from motives of kindness to him, or from a subsequent unwillingness to expose the transaction, which, from the testimony of Hardesty, he seems to have considered very culpable.

Wayman states, both in his answer to the bill of Jones and wife, and in the bill of Stockett and himself against them, that he was ignorant of the transfer until a short time before, but it is clearly proved by Beall and Morgan that he knew of it a few days after the transfer. Exceptions were filed to their testimony on the 14th of March of the present year, but they certainly come too late after the case has been to the Court of Appeals and their decision based upon that testimony; but if not too late, they do not appear to be sound. The object of the bank was not to prove Wayman's knowledge of the transfer. That had been admitted by Wayman in the bill, and the bank